

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

Request By State Broadcasters	)	
Associations For Declaratory Ruling	)	
	)	
Concerning Three Internet "Airtime Sales	)	MB Docket No. 07-137
Programs"	)	
	)	
	)	
	)	

To: Marlene H. Dortch, Secretary  
For transmission to Chief,  
Media Bureau

**COMMENTS OF SOFTWARE MEDIA EXCHANGE**

1. By Public Notice dated July 5, 2007,<sup>1</sup> the Federal Communications Commission, (the "Commission" or "FCC") requested comments on a Request for Declaratory Ruling ("Request") filed by broadcasters associations representing 41 states and the District of Columbia (the "Associations"). The Associations requested a declaratory ruling regarding "whether a broadcast station participating in any of [three specific Internet sales programs] must take into consideration the 'sale price' of the airtime sold to advertisers under these programs when computing the station's lowest unit rate." SoftWave Media Exchange (hereinafter "SWMX") is one of the three Internet sales programs named in the Request.

2. The Commission's Public Notice expanded its inquiry beyond the specific scope of the Request to encompass additional issues related to advertising by legally qualified candidates for elective office under the Communications Act. Specifically, it seeks comment on any additional issues that these Internet sales programs may raise under Sections 315, 312(a)(7), and 317 of the

---

<sup>1</sup> DA 07-2985

Communications Act of 1934, as amended, and the Commission's implementing rules. The Commission also asked for factual information on the specific design and operation of each of these Internet sales programs.

### **The SoftWave Media Exchange System**

3. The SWMX system is comparable to an unwired network under Commission precedent. Consequently, the rates used in the sale of spot advertising time should not be calculated into the affiliated station's local Lowest Unit Charge ("LUC"). As described below, SWMX delivers a targeted collection of broadcast stations to advertisers with a customizable mix of listener characteristics fitted to the "just in time" spot inventory audience needs of the advertiser.

4. The SWMX platform offers two modules: standby and flighted. In the original standby system, the station cannot negotiate the rate. It is determined by the SWMX network and the advertiser. The station can only accept or reject an advertisement. SWMX has now developed a flighted module for radio, television and cable television. In the flighted model, a station can propose an alternative to the rate submitted by the advertiser.

5. Softwave accepts political "use" ads from legally qualified candidates. Stations running these ads may not censor their content. Moreover, the SWMX system promotes the policy objectives of Sections 315 and 312 of the Communications Act.

### **How It Works**

6. The SWMX web-based software system enables station management to sell unsold commercial inventory to clients that desire to use carefully selected radio stations to design very targeted and particularized networks for each campaign. Advertisers enter the portal by registering and creating a "user profile" for the advertising objective. The goal is to create individualized, scalable and instantaneously redesigned networks that can develop the most

efficient affiliate inventory media campaign from start to finish. The “flighted” model is designed along the same lines, but for even longer running and pre-planned advertising campaigns. Using its affiliate database of commercial radio stations, SWMX allows advertisers to tailor their reach based on specific marketing criteria matched to station profiles and to create an “unwired network” of affiliate stations. As shown in Figure 1, advertisers can create their networks based on market characteristics, format, demographic categories or specific station identities. Once the advertiser has established its marketing criteria, each station receives a notice that an advertiser has included it in its network.

**Campaign Manager** Radio Campaign 1 > News Network Campaign

List Products Copy Schedule Profile **Stations** Cost Projections

### Edit Profile

You are now ready to edit Profile.

▼ INSTRUCTIONS

Use profile template:

**Primary demographic:**

- Adults 18-34
- Adults 18-49
- Adults 35-64
- Adults 45+
- M18-34

**Selected Primary Demographic(s)**

- Adults 25-54

**Secondary demographic:**

- Adults 18-34
- Adults 18-49
- Adults 25-54
- Adults 45+
- M18-34

**Selected Secondary Demographic(s)**

- Adults 35-64

DMA rank:  to

**Market:**

- Akron, OH
- Albany, GA
- Albany-Schenectady-Troy, NY
- Alexandria, LA
- Altoona, PA

**Selected Market(s)**

- Abilene, TX
- Albuquerque, NM
- Allentown-Bethlehem, PA
- Santa Rosa, CA
- Winchester, VA

**Format:**

- 80s Hits
- AC/DC

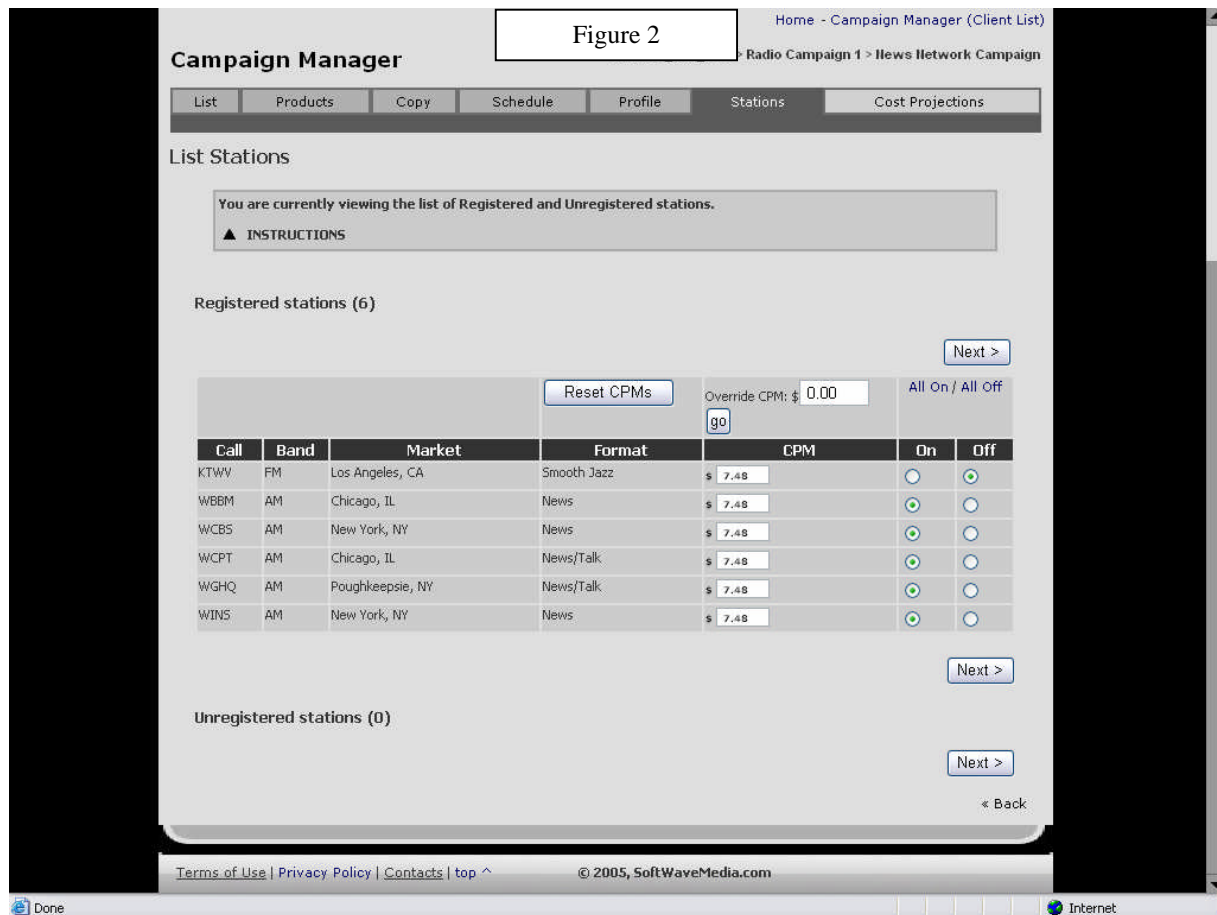
**Selected Format(s):**

- News
- News/Talk

Internet

7. When an advertiser selects the stations to make up its unwired network station complement for a campaign, it is presented with a suggested cost per thousand (CPM) in a field

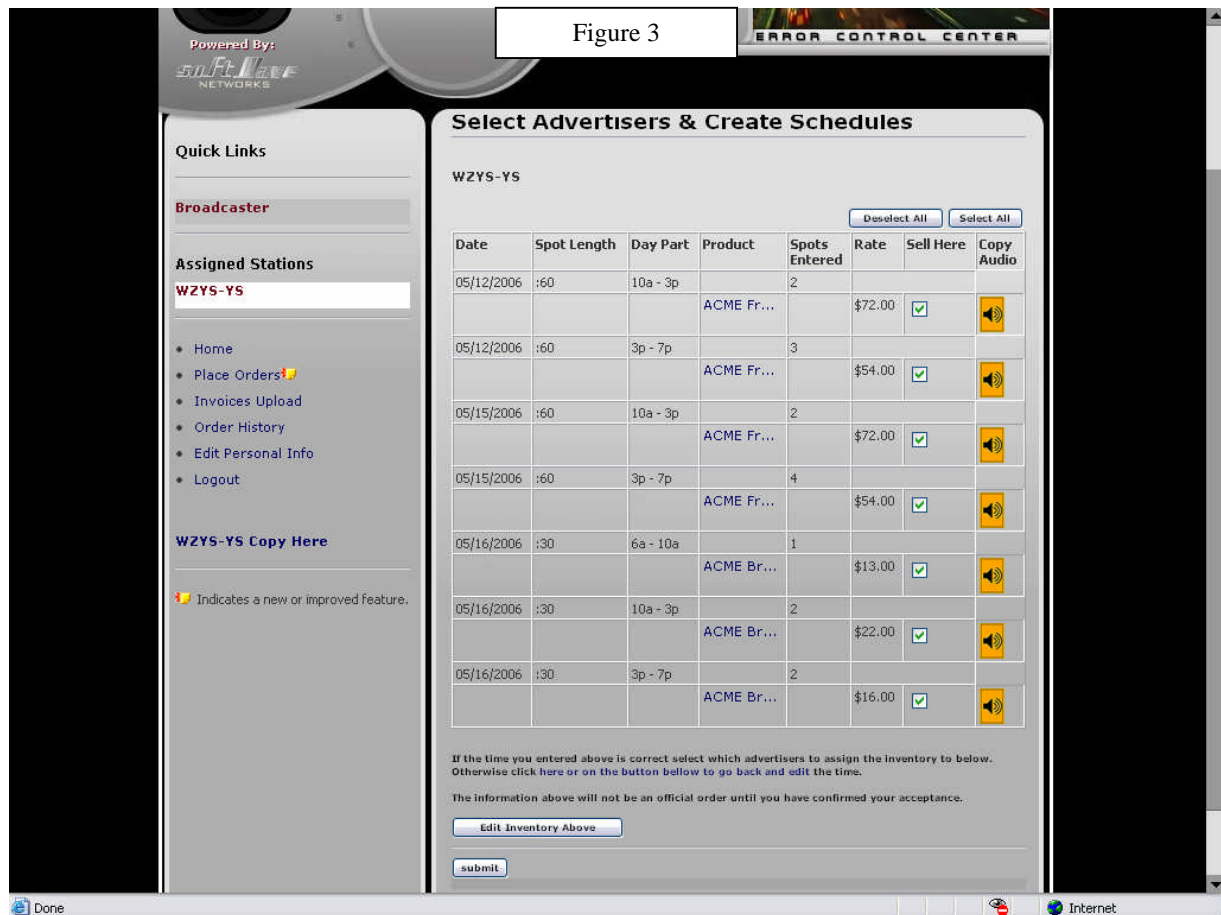
populated by SoftWave. The advertiser then has the option to accept the suggested CPM, or to change the CPM to a different rate. (See Figure 2)



8. After the advertiser submits the campaign, its CPM by station is set. In the original SWMX program for radio, the broadcaster may only accept or reject the advertisement at the set rate. In the “flighted” model, a station may propose a different compensation rate for its affiliation in the network.

9. From the broadcaster perspective, the system works as follows. Station management will log in to SWMX and view a list of client networks that have chosen to include the station and its inventory. If station management is willing to accept the advertisement, the station will be able

to print the order, download the spot (or a script) from the site, and immediately air the commercials or place them in the proper schedule. (See Figure 3)



10. The SWMX system operates like other unwired networks, except that the parameters of its network are scalable and easily adjustable—by applying an old concept to the new technology of the Internet.

11. The following principles are applied and built into the system:

- No commercial advertiser, even the “most favored,” may go directly to an affiliate station and receive a comparable rate to the one set by and accepted through the network.
- Each station accepts a CPM based rate through the network which would not be available to that station’s most favored commercial advertiser for time sold directly on the station alone (unless it happens to be available on the station, in which case it would be a component of the LUC calculation).

12. Furthermore, SWMX has the ability to, and does, track and record the individual stations, classes of time, and rates composing every advertising campaign purchased through its network.

With the aid of this tracking system, it has built into its process the assurance that:

- Any legally qualified candidate who chooses to buy time through SWMX will be given the SWMX LUC for the various kinds of time it sells to commercial advertisers, and
- Every legally qualified opposing candidate for the same political office who makes a timely claim for equal opportunities will be provided with an equal opportunity over the same or a comparable network of stations with comparable classes of time at the SWMX LUC.

13. As part of the SWMX system, prior to accepting any advertisement by a legally qualified candidate for political office, affiliates are notified that, if requested by an opposing candidate within 7 days of each “use” or ad run, the station must duplicate the order by daypart, day, class of time and rate; and an insertion order is automatically generated for the opposing candidate. Furthermore, affiliates are advised that they may not censor candidate advertisements, thus fulfilling another of the objectives Section 315 of the Communications Act.

### **Commission Precedent**

14. Through its Internet-based system, SWMX affiliated stations are a part of an *ad hoc* network available to advertisers and programmers. SWMX sells time under an aggregated rate advertising structure that isolated stations would not be able to attract.

15. As discussed above, SWMX gives advertisers the ability to tailor an “unwired network” of affiliate stations, using market characteristics, format, demographic categories or specific station identities. This allows them to obtain unprecedented efficiencies of reach and cost never before seen in broadcasting. Once the advertiser has established its “qualifying station” criteria, affiliate station managers are notified that an advertiser, agency or other program provider is interested in including its station.

16. The SWMX system is fully consistent with FCC case precedent applicable to unwired networks. Accordingly, an affiliate's participation in the SWMX network should have no effect on the station's own local lowest unit rate. As shown from the above description, SWMX possesses the following features:

- SWMX delivers a customized collection of broadcast stations to advertisers, agencies and others in order to deliver a mix of desired listener characteristics.
- SWMX is able to add or delete stations from the mixture at any time, based on customer directives.
- SWMX allows broadcasters to maximize their utilization of broadcast time inventory by assignment of designated availabilities to its networks.
- For political "use" ads, the station may not censor content.
- SWMX observes network responsibilities for political equal opportunities and network lowest unit charge under Section 315 of the Communications Act.
- SWMX inherently promotes the objectives of Section 312(a)(7) of the Communications Act, since it prospers by selling advertising time.<sup>2</sup>

### **UNWIRED NETWORKS**

17. Although there is no "official" definition of an "unwired network," they have long existed in radio and television broadcasting. They are best described as:

a package of stations which have nothing in common but carrying spots for an advertiser. The advertiser selects the markets and the stations desired.<sup>3</sup>

18. These networks are a well-known and utilized feature of network broadcasting. For example, in announcing its intent to create a national classical radio network, *The New York Times*, as licensee of WQXR-FM, New York City, announced it was exploring creation of an

---

<sup>2</sup> See Softwave Advertisement attached as Exhibit A

<sup>3</sup> *Commercial Media Sales (CMS). Glossary.* See <http://cmsradio.com/glossary.html> (last viewed August 1, 2007)

unwired network for commercial classical stations.<sup>4</sup> Even the conventional wired networks have created unwired network divisions to supplement their network offerings.<sup>5</sup>

19. In radio, the term “network” has been traditionally associated with entities, such as radio networks ABC and Premiere, where hundreds of stations are fed the same programming with built-in spots, at a higher per spot cost (but at much reduced rates to the cost per thousand compared to local spot rates). However, even these organizations operate separate unwired networks composed of their affiliates. For example, a 30- or 60-second advertising spot could be purchased in designated dayparts that will run in a pre-selected group of affiliated stations, even where the stations run them as they see fit and not at precise, predetermined simultaneous times.<sup>6</sup>

20. As long ago as 1976, the Commission held that advertising run by stations as members of an unwired network was not to be calculated in determining the station’s own local lowest unit rate.<sup>7</sup> As stated in *Olender*, a

. . . network does not purchase time on a station in order to promote its own product or the product of “clients.” Rather, it enters into mutually beneficial, long-term contracts whereby it receives time for specific low rates, or perhaps for no fee at all. In turn it sells time on groups of stations at a “package price” to national advertisers which the individual stations might not otherwise be able to attract.

---

<sup>4</sup> *WQXR and ABC Radio Networks To Explore The Creation of a National Classical Radio Network*, Press Release, April 27, 2004, The New York Times, <http://phx.corporate-ir.net/phoenix.zhtml?c=105317&p=irol-pressArticle&ID=519954&highlight=> (last viewed August 6, 2007).

<sup>5</sup> See, for example, the biographical statement of John Bittig, COO of Relevant Radio, the self-billed “Largest Catholic Talk Radio Network in the United States,” states that he previously served at the Unwired Network Division of CBS Radio <http://www.relevantradio.com/NETCOMMUNITY/Page.aspx?&pid=318&srcid=312> (last viewed August 6, 2007)

<sup>6</sup> Burkhard Works, Radio Advertising Costs Less Than You Think, [http://www.burkhardworks.com/Radio\\_Advertising\\_Costs.htm](http://www.burkhardworks.com/Radio_Advertising_Costs.htm) (last viewed August 6, 2007).

<sup>7</sup> *Robert L. Olender*, 61 FCC 2d 694 (1976). *Olender* was concerned with Keystone Broadcasting Company, a “non-wired network,” Keystone had twenty member stations who received programming free of charge in return for an agreement to sell the network spots and program times to Keystone at a flat rate; Keystone then resold these spots and program times to national advertisers.



21. The FCC recognized unwired networks and that their rates do not affect the station's own lowest unit charge again in 1984 when it issued its *Political Primer*.<sup>8</sup>

The rate restrictions apply to networks as well as to individual stations, since networks are, in effect, selling time on behalf of their affiliated stations. This also means that the compensation an affiliate receives from a network for carrying a sponsored network program will not be considered in computing the affiliate's "lowest unit charge" for direct sales to candidates. *This principle applies to "non-wired networks" like Keystone as well as to interconnected networks like ABC, CBS, NBC, and MBS.* [Emphasis Added]

22. The Commission's most recent and thorough discussion of this issue arose in 1990, when it confirmed that compensation received by individual affiliates of a network created for the sole purpose of advertising sales generated by the network need not be included in the affiliate's LUC calculations.<sup>9</sup> This case, known as *Adlink*, provides that LUC will not apply to network sales when:

- No commercial advertiser, even the "most favored," could go directly to the station and receive a rate comparable to that which is offered to the network.<sup>10</sup>
- Each station charges the network a rate which would not be available to that station's most favored commercial advertiser for time sold on that station alone.<sup>11</sup>
- Any candidate who chooses to buy time from the network must be given the network's LUC for the various kinds of time the network sells to commercial advertisers.

23. The Commission described *Adlink* as a company that acts as an advertising sales representative for a network of cable television systems serving over one million homes. It sold and delivered national and regional spot advertising to be carried on basic cable channels. *Adlink* presents itself to advertising agencies as a means for reaching an audience on a

---

<sup>8</sup> *Political Primer*, 100 FCC 2d 1476 (January 1, 1984) at ¶ 66(f)

<sup>9</sup> *Letter to Charles M. Firestone*, 5 FCC Rcd 3255 (1990).

<sup>10</sup> Citing *The Law of Political Broadcasting and Cablecasting*, 100 FCC 2d 1476, 1514 (1984) and *Robert L. Olender*, 61 FCC 2d 694 (B/c Bur 1976)

<sup>11</sup> *Michael H. Bader*, 56 FCC 2d 840 [35 RR 2d 530] (B/c Bur 1975)

marketwide basis, as opposed to purchasing from separate cable systems. It sets the rates for the network time and is given the right to sell up to 50% of the inventory of a cable system's basic cable channels. Each affiliate is compensated based on the number of its subscribers. Otherwise, the individual systems sell their own inventory at their own rates. With the exception that it applies to cable television systems, this description is essentially the same as that of an unwired network.

24. The Commission held that Adlink's network relationship with its cable system affiliates was no different from the broadcast station networks described in its previous network decisions. Although the Commission's reasoning was that network advertising rates are, in effect, a special "package rate" unavailable to even the most favored commercial advertiser who chooses to buy time directly from an individual network affiliate, the critical issue is that the per spot unit rate is simply not available from the local cable system or the local station. With that logic in mind, the FCC wrote:

Thus, the rates paid by Adlink to its affiliates are not required to be included in the affiliate's LUC calculations in connection with sales of time made by the affiliate system. Adlink pays its affiliates a lower rate than is generated by the affiliate, even on spots sold to the affiliate's most favored commercial advertisers, based on the network's success in combining large numbers of households via its network of cable systems. . . . The individual cable system benefits from Adlink's ability to attract regional and national advertisers who otherwise might not be interested in purchasing time on a single cable system. . . . The LUC provision is not thwarted because any candidate who chooses to buy time from Adlink must be given the network's LUC for the various kinds of time it sells commercial advertisers. Correspondingly, a candidate who buys time directly from an Adlink affiliate must be provided that individual cable system's LUC for the various classes of time it offers commercial advertisers.

*Letter to Charles M. Firestone, supra.*

## THE SWMX OPERATION

25. The principles of SWMX's operation are nearly identical to those described in *Olender* and *Adlink* with the exceptions that (a) SWMX deals with broadcast radio and television stations, and cable television basic channels, while *Adlink* deals solely with cable television basic channels and (b) SWMX has harnessed the Internet to ease the administrative tasks and shorten the required time frame of the relationship.

26. *Adlink* establishes that the Commission's network policy applies with equal force to pure advertising networks. It is noteworthy that *Adlink* remains in operation today,<sup>12</sup> claiming to air 100,000 commercials a day over 80 cable systems with a one buy, one tape, and one invoice transaction. Utilizing compressed video, *Adlink* sends specific spots to specific communities within the Los Angeles DMA, simultaneously with full accuracy, allowing advertisers to segment the market as they wish.

27. Critically important to the SWMX business model and to Commission consideration of its eligibility as a network under *Olender* and *Adlink* are the following factors:

- No commercial advertiser, even the "most favored," may go directly to an affiliate station and receive a rate comparable to that which is set by and accepted through the network.
- Each station accepts a rate through the network which would not be available to that station's most favored commercial advertiser for time sold directly on the station alone (unless it happens to be available already on the station and therefore *would* be a component of its lowest unit rate calculation).

28. The SWMX system provides the following protections for political candidates:

- Any legally qualified candidate who chooses to buy time through the SWMX network will be given the SWMX LUC for the various kinds of time it sells to commercial advertisers, and
- Every legally qualified opposing candidate for the same political office who makes a timely claim will be provided with equal opportunities.

---

<sup>12</sup> See: [http://www.adlink.com/who\\_we\\_are/interconnect.shtml](http://www.adlink.com/who_we_are/interconnect.shtml) , last viewed August 1, 2007.


- The policies underlying Section 312(a)(7) are furthered by opening a new avenue through which candidates for public office can obtain access to advertising time with the enhancement that they can form their own networks without the burden of negotiating with individual radio stations.

## **CONCLUSION**

The foregoing makes clear that the SWMX network benefits all those who participate in it, including the political candidate. SWMX actively solicits the political candidate advertiser, as demonstrated by its advertising brochure attached as Exhibit A. SWMX has been productively utilized by political candidate advertisers to their great satisfaction, as shown in Exhibit B, the letter from Sheinkopf, Ltd., a nationally recognized political consulting firm. Based on ample Commission precedent, SWMX should be treated in the same manner as an “unwired network” and the rates it charges not be included in the calculation of a participating station’s own LUC.

Respectfully submitted,

### **SOFTWARE MEDIA EXCHANGE**

By: 

Gregg P. Skall  
Michael H. Shacter  
Its Attorneys

### **Womble Carlyle Sandridge & Rice, PLLC**

1401 I Street, NW  
Seventh Floor  
Washington, DC 20005  
(202) 857-4400

August 6, 2007

## Exhibit A

EFFICIENCY...ACCOUNTABILITY...CONTROL...TARGETING..

..ROI...SPOT DELIVERY...AUTOMATION...EDI...RESULTS



### INTRODUCING WEB-BASED POLITICAL MEDIA BUYING

**SWMX**  
SOFTWARE MEDIA EXCHANGE

#### The secret weapon for your next political campaign

**Place radio ads in minutes through SWMX's  
exclusive web-based platform**

**Fast, intuitive process eliminates time-  
intensive contact with radio stations**

**No cost to media buyer or candidate**

**Choose from over 1,300 leading  
radio stations across the U.S.**

**Create custom networks that reach your  
target and maximize campaign budget.**

**Easy, online legal filings for  
political advertising**

**100% FCC Compliant**

### SWMX POLITICAL MEDIA BUYING

Launched in February 2005, Software Media Exchange enables advertisers and broadcasters to implement, execute and manage sophisticated media transactions in one process, from a single platform location, in real time. Now political consultants and campaign committees can leverage the power and efficiency of SWMX to reach targeted voters when it's most critical and maximize the impact of every campaign dollar.

### SWMX RADIO: COAST TO COAST

SWMX Radio serves leading radio stations across the US representing\*:

- 13 of the top 15 broadcast groups
- 50 of the top 50 US markets
- 38 of the top 50 US stations
- 40% of the total US broadcast radio market

\*AdSource Fall/Winter Book, 2005/2006 - All Numbers Based on Adults 12+ Ratings for Monday-Friday 6 AM - 7 PM



REACH A NATIONAL DAILY AUDIENCE OF OVER 9 MILLION LISTENERS

SWMX POLITICAL CABLE AND BROADCAST TELEVISION COMING SOON

Call for Details

#### FOR FURTHER INFORMATION

SWMX Sales • Paul Noonan • 914-406-8452 • pnoonan@swmx.com

Advertiser Support • Kevin Mannix • 914-406-8448 • kmannix@swmx.com

Broadcaster Support • James Ferguson • 914-406-8456 • jferguson@swmx.com

Press Inquiries, Investor Relations • Christian Kitchell • 914-406-8403 • ckitchell@swmx.com

General Inquiries 914-406-8400

WWW.SWMX.COM

POLITICAL MEDIA HANDBOOK VER. 2.0

..ROI...SPOT DELIVERY...AUTOMATION...EDI...RESULTS

THE MEDIA EXCHANGE IS OPEN



### SWMX TIME CHALLENGE

## BUY MEN 35-64 IN 40 MARKETS

### SWMX RESULT: 15 MINUTES

That's right - with SWMX you can execute a targeted 40 market buy, against the demographics you select, at the price you choose, literally in minutes.

SWMX delivers an intuitive, feature rich web-based interface for political media buyers to plan, execute and manage complex broadcast media transactions in real-time.

From proprietary tools like Campaign Manager™ and Media Manager™ to work flow functionality like automated spot delivery and electronic reconciliation, SWMX enables political media buyers to focus on what really matters: RESULTS.

HEADQUARTERS  
1 Bridge Street  
Irvington, NY 10533

PSIRT STD  
US POSTAGE  
PAID  
NEWBURGH, NY  
PERMIT NO. 38

**SWMX**  
SOFTWARE MEDIA EXCHANGE



### The secret weapon for your next political campaign...

POLITICAL MEDIA HANDBOOK VER. 2.0

Exhibit B



July 12, 2007

Paul Noonan  
SWMX  
Sr. Vice President Sales  
1 Bridge Street  
Irvington, NY 10533

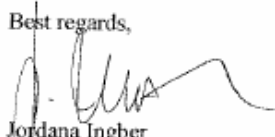
Dear Paul:

I want to begin by apologizing for not extending this letter of gratitude sooner. As you know, Sheinkopf Ltd. is a nationally recognized political consulting firm that produces media for public affairs organizations and private sector corporations across the country. The services provided to us by SWMX have allowed Sheinkopf to better provide for the needs of our own clients and to operate more efficiently throughout the course of our professional relationship.

If the mark of distinction for a company is the level of dedication to those it services, then the personal attention and unwavering patience that you have shown us time and again are a testament to the excellence of SWMX. No launch is too small nor campaign too frustrating to be met with the utmost graciousness from you and your staff. The reliability with which you deliver rates and schedules in response to our endless requests is matched only by the certainty of success for those media campaigns, which you help Sheinkopf Ltd. plan and execute.

SWMX came to us highly recommended. Not only did you not disappoint, you surpassed all expectations and for that we continue to be grateful.

Best regards,

  
Jordana Ingber  
Director of Media Development

152 MADISON AVE ■ SUITE 1603 ■ NEW YORK, NY 10016 ■ 212.725.2378 ■ FAX 212.725.6896  
INFO@SHEINKOPF.COM